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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MM DOCKET NO. 93-155

File No. BAPH-920917GO

For Assignment of Construction
Permit of Station KCVI(FM),
Blackfoot, Idaho

**MASS MEDIA BUREAU'S OPPOSITION TO
CONTINGENT INFORMAL REQUEST FOR STAY**

2. RRI is not a party to this proceeding and, thus, lacks standing to file its request. RRI did file a Petition to

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Intervene on July 21, 1993. The Bureau opposed the petition on July 30, 1993. The petition is pending. In the meantime, RRI does not have party status. Indeed, in the Hearing Designation Order for the above-captioned proceeding, 8 FCC Rcd 4074, 4075 (1993) ("HDO"), the Commission specifically ruled that RRI lacks standing to file a petition to deny. Accordingly, RRI's request should be dismissed.

3. Even on the merits, RRI's request should be denied. RRI is asking the Presiding Judge to hold in abeyance his disposition of various pending motions.¹ However, RRI has not met the stringent test for such a stay. Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958) and Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 844 (D.C. Cir. 1977). In fact, RRI does not even address the requirements for a stay. Clearly, characterizing the request as "informal" does not relieve RRI from its burden of justifying the relief which it seeks. To hold otherwise would make a mockery of the requirements for a stay.

4. RRI argues that the stay is warranted because RRI did not have an opportunity to respond to the pending pleadings. RRI would like the Presiding Judge to delay ruling on pending matters

¹ One of them, a Petition for Leave to File a Petition for Reconsideration, is pending before the Commission, not the Presiding Judge.

until RRI's party status is determined, so that, if RRI is allowed to intervene, RRI can respond to the pleadings which have already been filed. However, RRI did not have standing to respond to the motions when they were filed and has no standing to respond to them now. In any event, RRI's dilemma is of its own making. RRI could have filed its petition for intervention anytime within 30 days of the publication of the HDO in the Federal Register.. That way, its party status could have been resolved earlier. Instead, RRI waited until the last possible moment to signal its intentions. Now, RRI complains that it was not served with copies of pleadings². However, the parties were not required to serve a non-party.

² RRI could have also monitored the Commission's records, which RRI admits it did not check until July 22, 1993.

5. For the reasons set forth in the foregoing comments, the Bureau opposes RRI's request for stay.

Respectfully submitted,
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August 4, 1993

CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch Mass Media Bureau, certifies that she has, on this 4th day of August, 1993, sent by regular United States mail, U.S. Government frank, copies of the foregoing **"Mass Media Bureau's Opposition to Contingent Informal Request for Stay"** to:

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